

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

HENRY KUEHN and
JUNE P. KUEHN

PLAINTIFFS

VS.

CAUSE NUMBER:1:08CV577-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY
and JOHN DOES 1 THROUGH 10

DEFENDANTS

**STATE FARM'S RESPONSE TO PLAINTIFFS' MOTION
FOR EXTENSION OF DEADLINE TO DESIGNATE EXPERT WITNESSES OR,
IN THE ALTERNATIVE, TO STAY THE PROCEEDINGS**

COMES NOW, Defendant State Farm Fire & Casualty Company ("State Farm Fire"), and responds to *Plaintiffs' Motion for Extension of Deadline to Designate Expert Witnesses or, in the Alternative, to Stay the Proceedings* [94, 95]. As grounds for this motion¹, Defendant states as follows:

1. Presently before the court is Plaintiff's motion for an extension seeking to extend the designation deadline of December 2, 2009 or, in the alternative, to stay the proceedings [94, 95]. Defendant does not agree or consent to an extension of the expert deadline, or staying the case, for the following reasons.

2. The basis for Plaintiffs' request is that Judge Senter has issued a Memorandum Opinion [85], Amended Order [88], and Judgment [87] concerning the appraisal clause, which Defendant has requested reconsideration. Although Defendant will respect the ultimate decision of Judge Senter, Defendant will appeal Judge Senter's decision if it is unfavorable to Defendant. Defendant is equally certain that if Judge Senter's decision is favorable to Defendant that Plaintiffs

¹ No separate memorandum in support is filed with this motion as the motion speaks for itself.

will appeal.

3. Ultimately Defendant expects that this case will address the issues commonly addressed in Katrina litigation absent the issues of appraisal. Both parties should be prepared for those issues and there are no reasons to delay that preparation.

4. In addition to preparing for the ultimate issues, which we expect the court will litigate, Plaintiffs recently alerted Defendant of the threat that the structure will be destroyed. Defendant is entitled an opportunity to preserve any evidence before destruction occurs.

5. In that regard, Defendant made a request of Plaintiffs to reinspect the property. Citing Judge Senter's prior ruling, Plaintiffs' counsel indicated that they would not allow access to the property and advised Defendant's counsel that they would have to file a motion to gain access. Defendant filed that motion [96] on December 3, 2009. The Court has ruled in Defendant's favor and ordered that an inspection should occur prior to the demolition of said structure.

6. In addition, after Plaintiffs' filed a Motion to Stay, they propounded discovery requests [100, 101] on or about December 11, 2009.

7. Defendant knows of no harm to Plaintiffs to allow discovery to be conducted in this matter in order to preserve evidence and testimony. In the event the Court does not reconsider, Defendant will most likely appeal this Court's decision, which may take years, and the house will likely be altered by then either through actions of the Plaintiffs during renovation, or further deterioration.

WHEREFORE, PREMISES CONSIDERED, Defendant State Farm Fire respectfully requests that *Plaintiffs' Motion for Extension of Deadline to Designate Expert Witnesses or, in the Alternative, to Stay the Proceedings* [94, 95] should be denied.

RESPECTFULLY SUBMITTED,

STATE FARM FIRE AND CASUALTY
COMPANY

HICKMAN, GOZA & SPRAGINS, PLLC
Attorneys at Law
Post Office Drawer 668
Oxford, MS 38655-0668
(662) 234-4000

BY: /s/ H. Scot Spragins
H. SCOT SPRAGINS, MSB # 7748

CERTIFICATE OF SERVICE

I, **H. SCOT SPRAGINS**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have on this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

DATED, December 16, 2009

/s/ H. Scot Spragins

H. SCOT SPRAGINS

H. SCOT SPRAGINS, MSB # 7748
HICKMAN, GOZA & SPRAGINS, PLLC
Attorneys at Law
Post Office Drawer 668
Oxford, MS 38655-0668
(662) 234-4000